

REMARKS

Claims 2-4, 8-19, 21-23, and 25-26 are pending. Claims 22 and 26 have been withdrawn. Claims 11-14 are objected to. Claims 2-4, 8-19, 23, and 25 have been rejected.

Claim Rejections – 35 U.S.C. § 103

Claims 2-4, 15-19 and 25 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,904,691 (hereinafter "Barnett '691") in view of U.S. Patent No. 6,235,038 (hereinafter "Hunter '038").

Barnett '691 discloses surgical guide 2, shown in Fig. 1, including infrared emitters 4a-4d, aperture 106, and cylindrical boss 104. Cylindrical boss 104 is used to attach surgical guide 2 to an instrument holder. Additionally, aperture 106 is a guide aperture that supports a surgical tool and extends orthogonally with respect to the top and bottom surfaces of surgical guide 2.

Hunter '038 discloses a system for utilizing and registering at least two surgical navigation systems during stereotactic surgery. Included in this disclosure is translation device 60. In one embodiment, electromagnetic element 90 is placed in tip portion 64 of translation device 60 to allow for tracking of tip portion 64.

Independent Claim 15 of the present application calls for a surgical system including a navigated orthopaedic guide including means for being tracked by the surgical navigation system and means for establishing a datum in a desired position relative to the surgical site and a surgical component including *means for engaging the datum positioned by the orthopaedic guide*. Applicants do not see how the combination of Barnett '691 which discloses a surgical guide including a guide aperture, with Hunter '038, which discloses a tracked pointer probe, renders obvious Applicants claimed invention, which includes a means for establishing a datum in a desired position and a surgical component including means for engaging the datum positioned by the orthopaedic guide. The claimed structure is neither disclosed nor suggested by the combination of Barnett '691 and Hunter '038. While Hunter '038 may be utilized to identify points within the purview of a surgical navigation system, it does not establish a datum in a desired position relative to a surgical site as called for in Applicants independent Claim 15. Furthermore, even assuming that such a datum is created, nothing in Barnett '691 or Hunter '038 discloses or suggests a surgical

component including means for engaging such a datum, as called for in Applicants independent Claim 15. Therefore, Applicants respectfully request withdrawal of the 35 U.S.C. § 103 rejection of independent Claim 15 and Claims 2-4, 16-19 and 25 depending therefrom.

The remaining dependent claims all stand rejected over a combination of Barnett and Hunter as discussed above and further in view of additional secondary references. Applicants respectfully submit that these claims are patentable over the prior art of record for at least the reasons advanced above with respect to independent Claim 15.

Allowable Subject Matter

Applicants thank the Examiner for indicating the allowability of Claims 11-14.

Conclusion

It is believed that the above represents a complete response to the Office Action and reconsideration is requested. Specifically, Applicants respectfully submit that the application is in condition for allowance and respectfully request allowance thereof.

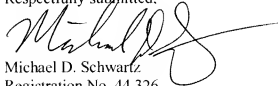
In the event Applicants have overlooked the need for an additional extension of time or payment of fee, Applicants hereby petition therefor and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels LLP.

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Application No. 10/795,830
Amendment dated November 9, 2009
Reply to Office Action dated July 7, 2009

Should the Examiner have any questions regarding any of the above, the Examiner is respectfully requested to telephone the undersigned at 260-424-8000.

Respectfully submitted,



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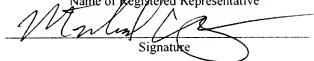
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November 9, 2009

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